

No. 16150 ✓

See Vol. 3078

United States
Court of Appeals
for the Ninth Circuit

MORTIMER A. KLINE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

and

GORDON OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review Decisions of the Tax Court
of the United States

FILED

DEC 23 1958

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

J. W. BULLION,
Republic Nat'l Bank Bldg.,
Dallas, Texas.

For Respondent:

CHARLES K. RICE,
Asst. U. S. Attorney General;

LEE A. JACKSON,
Attorney,
Department of Justice,
Washington 25, D. C.

The Tax Court of the United States

Docket No. 57291

MORTIMER A. KLINE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1955

Apr. 8—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 11—Copy of petition served on General Counsel.

May 31—Answer filed by General Counsel.

May 31—Request for hearing in Los Angeles, Calif., filed by General Counsel.

June 6—Notice issued placing proceeding on Los Angeles calendar. Service of Answer and Request made.

July 12—Reply to answer filed by petitioner. Copy served 7/13/55.

1957

Feb. 20—Hearing set April 15, 1957, Los Angeles, Calif.

Apr. 22—Hearing had before Judge Raum on the merits. Joint oral motion to consolidate for trial—Granted. Submitted—Stipulation of facts filed. Briefs due June 7, 1957; Reply Briefs due July 8, 1957.

1957

May 10—Transcript of Hearing, 4/22/57, filed.

June 4—Brief filed by petitioner—Served 6/10/57.

June 7—Brief filed by respondent—Served 6/10/57.

July 3—Reply Brief filed by petitioner—Served
7/10/57.

1958

Mar. 13—Findings of Fact and Opinion filed, Judge
Raum, Decision for Respondent.

Mar. 19—Decision entered, Judge Raum.

June 9—Petition for Review by U.S.C.A., 9th, filed
by Petitioner.

June 9—Proof of Service of Petition for Review
filed.

June 10—Agreed Designation filed.

July 7—Order extending time for filing record on
review and docketing Petition for Review
to Sept. 7, 1958, entered.

[Title of Tax Court.]

Docket No. 57292

GORDON OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1955

Apr. 8—Petition received and filed. Taxpayer noti-
fied. Fee paid.

1955

Apr. 11—Copy of petition served on General Counsel.

May 31—Answer filed by General Counsel.

May 31—Request for hearing in Los Angeles, Calif., filed by General Counsel.

June 6—Notice issued placing proceeding on Los Angeles calendar. Service of Answer and Request made.

1957

Feb. 20—Hearing set April 15, 1957, Los Angeles, Calif.

Apr. 22—Hearing had before Judge Raum on the merits. Joint oral motion to consolidate for trial—Granted. Submitted. Stipulation of Facts filed. Briefs due June 7, 1957; Reply Briefs due July 8, 1957.

May 10—Transcript of Hearing, 4/22/57, filed.

June 4—Brief filed by taxpayer. Served 6/10/57.

June 7—Brief filed by Respondent. Served 6/10/57.

July 3—Reply Brief filed by petitioner. Served 7/10/57.

1958

Mar. 13—Findings of Fact and Opinion filed, Judge Raum, Decision for Respondent.

Mar. 19—Decision entered, Judge Raum.

Mar. 26—Order vacating Decision and Decision, entered.

June 9—Petition for Review by U.S.C.A., 9th, filed by petitioner.

1958

June 9—Proof of Service of Petition for Review, filed.

June 10—Agreed designation filed.

July 7—Order extending time for filing record on review and docketing petition for review to Sept. 7, 1958, entered.

[Title of Tax Court and Cause.]

Docket No. 57291

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols A:R:90D:LPH) dated January 18, 1955, and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual with offices at 812 General Petroleum Building, 612 South Flower Street, Los Angeles 17, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on January 18, 1955.

3. The deficiency as determined by the respondent is liability as transferee of assets of Gordon Oil

Company, and arises because of income and excess profits taxes for the taxable year ended August 31, 1951, determined against Gordon Oil Company by the respondent. The amount in controversy is \$46,-256.88.

4. The determination of transferee liability and taxes set forth in the said notice of deficiency is based upon the following errors:

(a) The respondent has erroneously and improperly increased Gordon Oil Company's taxable income \$82,518.70 by disallowing that sum as a loss from the sale of depreciable equipment.

5. The facts upon which petitioner relies as the basis for this proceeding are as follows:

(a) Gordon Oil Company was incorporated under the laws of California on January 20, 1949.

(b) Thereafter Gordon Oil Company acquired two (2) undeveloped oil and gas leases, Government Serials LA05375 and 071300 in Section 31 of the Placerita Field, Los Angeles County, California. Gordon Oil Company developed the leases during 1949 and 1950, and in April, 1951, approximately twenty-nine (29) producing wells had been drilled in the two leases.

(c) Pursuant to agreement dated May 7, 1951, effective as of May 1, 1951, Gordon Oil Company sold its operating equipment, consisting of depreciable assets, for a total consideration of \$250,000.00. The adjusted basis of said assets was \$332,518.70.

In the final income tax return of Gordon Oil Company filed for the taxable year ended August 31, 1951, a loss in the amount of \$82,518.70 was claimed.

(d) In the agreement of May 7, 1951, referred to in paragraph (c) above, Gordon Oil Company assigned its leaseholds, reserving a payment out of the oil to be produced of 85% of the working interest to the value of \$3,600,000.00, plus 5% on the unliquidated balances and all taxes assessed against the reserved share of oil.

(e) On August 31, 1951, Gordon Oil Company ceased business and was dissolved.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due from Gordon Oil Company for the year 1951 and no transferee liability due from petitioner; and for any other and further relief as in the opinion of the Court petitioner is entitled to under the law.

/s/ MORTIMER A. KLINE,

/s/ SIDNEY R. REED,

/s/ J. W. BULLION,

Counsel for Petitioner.

Duly verified.

Received and filed April 8, 1955, T.C.U.S.

Served April 11, 1955.

[Title of Tax Court and Cause.]

Docket No. 57292

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols A:R:90D:LHP) dated January 18, 1955, and as a basis for its proceeding alleges as follows:

1. Petitioner was a corporation organized under and by virtue of the laws of the State of California, with principal office at 812 General Petroleum Building, 612 South Flower Street, Los Angeles 17, California. The return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California. This proceeding is brought on behalf of said corporation by its directors, pursuant to authority conferred upon them by law, as hereinafter alleged.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to petitioner on January 18, 1955.

3. The deficiency in controversy is income and excess profits taxes for the period January 1, 1951, to August 31, 1951. The amount in controversy is \$46,256.88.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following error:

(a) The Commissioner has erroneously and improperly increased petitioner's taxable income \$82,518.70 by disallowing that sum as a loss from the sale of depreciable equipment.

5. The facts upon which petitioner relies as the basis for this proceeding are as follows:

(a) Petitioner was incorporated under the laws of California on January 20, 1949.

(b) Thereafter petitioner acquired two undeveloped oil and gas leases, Government Serials LA05375 and 071300, in Section 31 of the Placerita Field, Los Angeles County, California. Petitioner developed the leases during 1949 and 1950, and in April, 1951, approximately twenty-nine producing wells had been drilled in the two leases.

(c) Pursuant to agreement dated May 7, 1951, effective as of May 1, 1951, petitioner sold its operating equipment, consisting of depreciable assets, for a total consideration of \$250,000.00. The adjusted basis of said assets was \$332,518.70. In the final income tax return of petitioner filed for the taxable year ended August 31, 1951, a loss in the amount of \$82,518.70 was claimed.

(d) In the agreement of May 7, 1951, referred to in paragraph (c) above, petitioner also assigned its leaseholds, reserving a payment out of the oil to be produced of 85% of the working interest to the value of \$3,600,000.00, plus 5% on the unliquidated balances and all taxes assessed against the reserved share of oil.

(e) On August 31, 1951, petitioner ceased business and was dissolved.

(f) The laws of California authorize the continued existence of a dissolved corporation for the purpose of winding up its affairs. The directors of a dissolved corporation are empowered to act on behalf of a dissolved corporation. California Corporation Code, Sections 5400, 4800, and 4801.

(g) The directors of Gordon Oil Company, the petitioner herein, were at the time of said dissolution and are now Mortimer A. Kline, Frank J. Gillis, and Charles C. Stanley, Jr.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due from the petitioner for the taxable year ended August 31, 1951, and for any other and further relief as in the opinion of the Court the petitioner is entitled to under the law.

[Seal] GORDON OIL COMPANY,

By /s/ MORTIMER A. KLINE,

/s/ FRANK J. GILLIS,

/s/ CHARLES C. STANLEY, JR.,

Directors.

/s/ SIDNEY R. REED,

/s/ J. W. BULLION,

Counsel for Petitioner.

EXHIBIT A

U. S. Treasury Department
Internal Revenue Service
District Director
Chief, Audit Division
P.O. Box 231—Main Office
Los Angeles 53, California

In replying refer to:

A:R:90D:LHP

Mi-8111, Ext. 381.

Gordon Oil Company,
812 General Petroleum Building,
612 South Flower Street,
Los Angeles 17, California.

Gentlemen:

You are advised that the determination of your income and excess profits tax liability for the taxable year(s) January 1, 1951, to August 31, 1951, discloses a deficiency or deficiencies of \$46,256.88 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Sat-

urday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the District Director of Internal Revenue, Chief, Audit Division, P.O. Box 231, Main Office, Los Angeles 53, California. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner;

By /s/ R. A. RIDDELL,
District Director of Internal
Revenue.

Enclosures:

Statement

Form 1276

Agreement Form

Statement

A :R:90D :LHP

Gordon Oil Company
 812 General Petroleum Building
 612 South Flower Street
 Los Angeles 17, California

Tax Liability for the Taxable Year January 1, 1951,
 to August 31, 1951

	Liability	Assessed	Deficiency
Income and excess profits tax	\$66,638.15	\$20,381.27	\$46,256.88

In making this determination of your income and excess profits tax liability careful consideration has been given to the report of examination dated October 4, 1954.

Adjustment to Net Income

	Income Tax Net Income	Excess Profits Net Income
Net income as disclosed by return.....	\$ 41,540.53	\$ 41,540.53
Unallowable deduction:		
(a) Loss from sale and conveyance....	82,518.70	82,518.70
Net income adjusted	\$124,059.23	\$124,059.23

Explanation of Adjustment

(a) It is held that the deduction of \$82,518.70 claimed in the return for "Net loss from sale and conveyance" does not constitute an allowable deduction in computing taxable income under section 23 of the Internal Revenue Code of 1939. The deduction is accordingly disallowed.

Computation of Excess Profits Credit

There has been determined an excess profits credit of \$41,-218.71, computed under section 445 of the Internal Revenue Code of 1939, in lieu of \$46,398.10, the amount claimed in the

return. The excess profits credit of \$41,218.71 is computed as follows:

Total assets at end of last taxable year ending prior to 7-1-50, per return	\$556,130.14
Less:	
(a) Net capital reduction for current taxable year	28,496.87
Balance	<u>\$527,633.27</u>

Industry classification—13.

Base period rate of return.....	9.3%
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Average base period net income (9.3% of \$527,633.27)	\$ 49,069.89
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Portion to be taken into account:

84% of \$49,069.89	\$ 41,218.71
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Excess profits credit based on income, as determined	\$ 41,218.71
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Explanation

(a) There is determined a net capital reduction for the current taxable year in the amount of \$28,496.87, computed as follows:

- Equity capital at beginning of first taxable year ending after 6-30-50, per return \$364,969.63
- Equity capital at beginning of taxable year:

Total assets, per return	\$649,180.58
Adjustment under Sec. 437(c), I.R.C. of 1939:	
Depletion allowed 1949	\$ 77,049.42
Depletion allowed 1950	236,657.96
Total	<u>\$313,707.38</u>

Limited to cost		
of leases	256,250.00	
Less: Reserve for		
depreciation, per		
balance sheet	50,208.22	206,041.78
	<hr/>	<hr/>
Total assets under Sec.		
437(c)		\$443,138.80
Total liabilities,		
per return	173,326.28	269,812.52
	<hr/>	
Excess of line 2 over line 1.....		None
Average daily capital addition.....		None
Average daily amount of distributions during the		
taxable year not out of earnings and profits, per		
return		\$142,316.87
Excess of line 1 over line 2.....		95,157.11
		<hr/>
Average daily capital reduction.....		\$237,473.98
Net capital reduction for current taxable year (12%		
of \$237,473.98)		\$ 28,496.87

Computation of Tax

Tentative tax under Sec. 108(g) (1), IRC of 1939:

Net income adjusted	\$124,059.23
Income tax (combined normal tax	
and surtax):	
47% of \$124,059.23.....	\$ 58,307.84
Subtract	5,500.00
	<hr/>

Tentative tax under Sec. 108(g) (1)	\$ 52,807.84
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Tentative tax under Sec. 108(g) (2), IRC of 1939:

Net income adjusted	\$124,059.23
Income tax (combined normal tax	
and surtax):	
52% of \$124,059.23.....	\$ 64,510.80
Subtract	5,500.00
	<hr/>

Tentative tax under Sec. 108(g) (2)	\$ 59,010.80
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Tax under Sec. 108(g), IRC of 1939:

1. Tentative tax under Sec. 108(g) (1).....	\$ 52,807.84
2. Tentative tax under Sec. 108(g) (2).....	59,010.80
3. Number of days in taxable year.....	243
4. Number of days before April 1, 1950.....	90
5. Number of days after March 31, 1951.....	153
6. Portion of item 1 which item 4 bears to item 3 (\$52,807.84x90/243)	\$ 19,558.46
7. Portion of item 2 which item 5 bears to item 3 (\$59,010.80x153/243)	37,154.95

Total income tax under Sec. 108(g).....\$ 56,713.41

Tax under Sec. 430, I.R.C. of 1939:

Excess profits net income.....	\$124,059.23
Excess profits net income on annual basis (\$124,059.23x365/243)	\$186,344.11
Less: Excess profits credit.....	41,218.71

Adjusted excess profits net income.....\$145,125.40

Excess profits tax:

(a) 30% of \$145,125.40 (Sec. 430(a) (1), I.R.C.
of 1939)\$ 43,537.62

(b) 8% of \$186,344.11 (Sec. 430(e) (B), I.R.C.
of 1939)\$ 14,907.53

Excess profits tax (lesser of items (a) and (b)).....\$ 14,907.53

Excess profits tax for short taxable year under Sec.

433 (\$14,907.53x243/365)\$ 9,924.74

Summary

Income tax\$ 56,713.41

Excess profits tax..... 9,924.74

Correct income and excess profits tax liability.....\$ 66,638.15

Income and excess profits tax assessed.

Original, Account No. CF 3-10019..... 20,381.27

Deficiency of income and excess profits tax.....\$ 46,256.88

Duly verified.

Received and Filed April 8, 1955, T.C.U.S.

Served April 11, 1955.

[Title of Tax Court and Cause.]

Docket No. 57291

ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits, denies and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the deficiency as determined by the respondent is liability as transferee of assets of Gordon Oil Company, and arises because of income and excess profits taxes determined against Gordon Oil Company by the respondent. The amount in controversy is \$46,256.88. Avers that the liability as transferee of assets of Gordon Oil Company arises because of income and excess profits tax liability for the taxable year January 1, 1951, to August 31, 1951, determined against Gordon Oil Company by the respondent. Denies the remaining allegations contained in paragraph 3 of the petition.

4(a). Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c). Admits that in the final income tax return of Gordon Oil Company filed for the taxable year ended August 31, 1951, a loss in the amount of \$82,-518.70 was claimed. Denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d). Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e). Admits the allegations contained in subparagraph (e) of paragraph 5 of the petition.

6. Denies generally each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

7. Further answering the petition respondent alleges that petitioner, Mortimer A. Kline, is liable under the provisions of Section 311 of the Internal Revenue Code of 1939 as transferee of assets of Gordon Oil Company, Los Angeles, California, transferor, for the latter's unpaid income and excess profits tax liability aggregating \$46,256.88 for the taxable year January 1, 1951, to August 31, 1951, plus statutory interest, as determined by the Commissioner of Internal Revenue. In support of the Commissioner's determination of transferee liability respondent alleges and relies upon the following facts:

(a). The Commissioner has determined income and excess profits tax deficiencies of \$46,256.88 for the taxable year January 1, 1951, to August 31, 1951,

against Gordon Oil Company. The said liability for income and excess profits taxes remains outstanding and has never been paid to the Director of Internal Revenue.

(b). That on or about August 31, 1951, the said Gordon Oil Company transferred assets having a value in excess of the aforesaid income and excess profits tax liability of \$46,256.88, plus statutory interest thereon, to Mortimer A. Kline, petitioner herein, without consideration.

(c). As a result of the transfer of such assets by Gordon Oil Company, transferor, to Mortimer A. Kline, petitioner herein, the said Gordon Oil Company became insolvent and without sufficient assets and funds from which the said income and excess profits tax deficiencies determined by the Commissioner of Internal Revenue, plus statutory interest thereon, might be satisfied and paid.

(d). Petitioner, Mortimer A. Kline, is liable as the transferee of assets of Gordon Oil Company, transferor, under Section 311 of the Internal Revenue Code of 1939, for the payment of said income and excess profits tax deficiencies totaling \$46,256.88, plus interest thereon as provided by law.

Wherefore, it is prayed:

(1). That the Tax Court enter its decision that the petitioner is liable at law and in equity as transferee of Gordon Oil Company, transferor, for the payment of the income and excess profits tax

deficiencies aggregating \$46,256.88, plus statutory interest thereon.

(2). That the petitioner's appeal be denied and that the respondent's determination be approved.

/s/ JOHN POTTS BARNES, R.E.M.
Chief Counsel, Internal
Revenue Service.

Filed May 31, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 57292

ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4(a). Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

(c). Admits that in the final income tax return of petitioner filed for the taxable year ended August 31, 1951, a loss in the amount of \$82,518.70 was claimed. Denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d). Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

(e) and (f). Admits the allegations contained in subparagraphs (e) and (f) of paragraph 5 of the petition.

(g). Admits that the directors of Gordon Oil Company, the petitioner herein, were at the time of said dissolution and are now Mortimer A. Kline and Frank J. Gillis; denies for lack of sufficient information the remaining allegations in subparagraph (g) of paragraph 5 of the petition.

6. Denies generally each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ JOHN POTTS BARNES, R.E.M.
Chief Counsel, Internal
Revenue Service.

Filed May 31, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 57291

REPLY

Now comes the above-named petitioner by his counsel, Sidney R. Reed and J. W. Bullion, and for reply to the affirmative allegations set out in the answer of the respondent, admits and denies as follows:

7. Denies that petitioner is liable under the provisions of Section 311 of the Internal Revenue Code of 1939 as transferee of assets of Gordon Oil Company, Los Angeles, California, transferor, for the latter's unpaid income and excess profits tax liability aggregating \$46,256.88 for the taxable year January 1, 1951, to August 31, 1951, plus statutory interest, as determined by respondent because there is no tax liability for said year due to respondent from said transferor.

7(a). Admits the allegations contained in paragraph 7(a) of the answer.

7(b). Admits the allegations contained in paragraph 7(b) of the answer.

7(c). Admits the allegations contained in paragraph 7(c) of the answer.

7(d). Denies the allegations contained in paragraph 7(d) of the answer because respondent erred in determining a deficiency in the amount of

\$46,256.88 against the transferor, Gordon Oil Company, to the petitioner.

Wherefore, it is prayed that this Court hear the above-entitled proceeding and determine that there is no deficiency due from the petitioner for the taxable year January 1, 1951, to August 31, 1951.

/s/ SIDNEY R. REED,

/s/ J. W. BULLION,

Counsel for Petitioner.

Received and Filed July 12, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

Docket Nos. 57291 and 57292

STIPULATION OF FACTS

It is hereby stipulated (without limiting either party in the presentation of any other items of proof, either related or unrelated to the matter herein referred to) as follows:

1. Mortimer A. Kline, hereinafter called "Kline," is an individual residing in Los Angeles, California. He filed his income tax return for the taxable year ended December 31, 1951, with the Collector of Internal Revenue at Los Angeles, California. Attached hereto and marked Joint Exhibit 1-A is a true copy of such return.

2. Gordon Oil Company, hereinafter called "Gordon", was incorporated under the laws of the State of California on January 20, 1949. It was incorporated for the purpose of acquiring, exploring, developing and producing oil and gas properties and throughout the period of its existence conducted that business.

3. Gordon filed its income and excess profits tax returns for the taxable period January 1, 1951, to August 31, 1951, with the Collector of Internal Revenue at Los Angeles, California. Attached hereto and marked Joint Exhibit 2-B is a true copy of the income tax return filed for such period.

4. After its organization, Gordon acquired two (2) undeveloped oil and gas leases on March 22, 1949, the same being Government Serials L. A. 05375 and 073100 in Section 31 in Placerita Field, Los Angeles County, California. Gordon drilled and equipped on said leases twenty-nine (29) producing wells.

5. During the period from March to May, 1951, Kline purchased all of the outstanding stock of Gordon for a total consideration of \$3,962,432.54.

6. After Kline had acquired control of Gordon, Gordon, as a principal, by proper and appropriate corporate action executed an assignment to A. H. Meadows, hereinafter called "Meadows", and Tevis F. Morrow, hereinafter called "Morrow". A copy of the assignment from Gordon to Meadows and Morrow is annexed hereto as Joint Exhibit 3-C and made

a part hereof for all purposes. The amount of \$250,000 in cash was received by Gordon upon execution of the assignment.

7. At the time of the assignment to Meadows and Morrow, Gordon had on hand tangible assets, either in or on or pertaining to the above-mentioned leases, with a then adjusted basis, for depreciation or for gain or loss, of \$332,518.70

8. The above-mentioned tangible assets, their respective costs to Gordon and adjustments due to depreciation were as follows as of the date of their assignment to Meadows and Morrow:

Physical equipment in wells	\$159,748.52
Buildings	8,147.12
Machinery and equipment	5,414.27
Pipelines	18,909.76
Pumping equipment	94,745.87
Reservoirs and tanks	25,725.35
Autos and trucks	7,200.05
Total	<hr/> \$319,890.94
Less reserve for depreciation	37,429.80
Adjusted basis of fixed assets	<hr/> \$282,461.14
Crude Oil Inventories—	
book amount	13,215.15
Materials and supplies at	
book amount	34,204.04
Electrical service deposits	2,638.37
Total Adjusted Basis of Properties Sold	<hr/> \$332,518.70

9. At the time of the assignment to Meadows and Morrow, Gordon had fully depleted its leasehold cost as to both of the leases hereinabove mentioned in paragraph 4.

10. Following the assignment to Meadows and Morrow, Gordon was dissolved and all of its assets and property on hand, including the reserved production payment, were distributed in complete liquidation of the company to Kline in cancellation and redemption of all of the outstanding stock of the company.

11. Kline was the transferee of the assets of Gordon upon its complete liquidation in August, 1951.

/s/ SIDNEY R. REED,

/s/ J. W. BULLION,

Counsel for Petitioners.

/s/ NELSON P. ROSE, R.E.M.

Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

Filed April 22, 1957. T.C.U.S.

The Tax Court of the United States

Docket Nos. 57291 and 57292

MORTIMER KLINE-GORDON OIL COMPANY,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

April 22, 1957—10:00 A.M.

Before: Honorable Arnold Raum, Judge.

Appearances:

SYDNEY R. REED and
J. W. BULLION,
Appearing for the Petitioners.

MARK TOWNSEND,
Appearing for the Respondent.

The Clerk: The case of Mortimer Kline-Gordon Oil Company.

Will counsel please state your appearances for the record?

Mr. Bullion: Sydney R. Reed and J. W. Bullion for the Petitioners.

Mr. Townsend: Mark Townsend for the Respondent.

The Court: Proceed.

Mr. Bullion: Your Honor, I would like to move first that these two cases be consolidated for hearing.

Mr. Townsend: We agree they should be consolidated.

The Court: The cases will be consolidated.

Mr. Bullion: These cases involve a single issue, your Honor, a question of loss. The loss arose in this way: Mr. Mortimer Kline purchased all of the stock of Gordon Oil Company. After he had acquired all that stock, Gordon Oil Company sold to A. H. Meadows and Tevis F. Morrow all of its assets except cash and accounts receivable, and including two oil and gas leases, and all of the equipment on those leases, and in the assignment of those properties, there was reserved to Gordon a production payment in the full net sum of \$3,600,000.00 over and above all ad valorem taxes or any other taxes measured by production, and plus an additional amount of oil equal to five per cent per annum on the [2*] unliquidated balance of that sum of \$3,600,000.00.

Now, that was true production payments, your Honor, and I think the respondent will agree with us and stipulate that it is not tantamount to an override, and would have been discharged and liquidated substantially prior to the exhaustion of the economic life of the properties.

Mr. Townsend: We will so stipulate.

Mr. Bullion: Now, the interest with this production payment, which was dischargeable out of five per cent of the 85 per cent of the returns accru-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

ing to the properties was sold for \$25,000.00 in cash. That included the physical equipment in and on the wells and other physical and tangible assets pertaining to the operation of the leases. The basis of the taxpayer, Gordon Oil Company, in that property was some \$332,000.00. It received cash of only \$250,000.00, and in its return, claimed a loss of \$82,000.00 being the difference between its unrecovered cost in the tangible assets and the cash received.

Now, it is the respondent's position that that loss is an allowable loss. This court and the Supreme Court gave that result, we think in the Chock case.

The Court: You mean that is the petitioner's position?

Mr. Bullion: I am sorry; thank you, sir. That is the petitioner's position. [3]

In the Chock case, the proper oil and gas leases were sold with an overriding royalty reserve. That is an interest that lasts for the life of the property, and there was an allocation of the case as to physical equipment and leasehold estate. The allocation showed a loss so far as the physical equipment was concerned, and the Tax Court and the Supreme Court allowed that loss.

Now, as we understand it, the respondent's position is that that unrecovered basis may not be taken as a loss but must become a part of the basis of the retained oil payment, or production payment.

We submit that there is no authority for the proposition of transferring depreciable basis to a depletable asset.

Mr. Townsend: Your Honor, this case comes squarely within a ruling which was made a good number of years ago by the Internal Revenue Service. It's GCM-236223. That ruling was also reestablished after the Chock decision by Revenue Ruling 55-35.

It is the government's position, as Mr. Bullion pointed out, that the unrecovered cost of this equipment becomes a part of the basis of the retained oil payment and may be recovered only by deletion.

It is the government's position that in this type of a situation we have a theoretical loss rather than an [4] actual economic loss, that to allow the loss in this type of situation would open the door to tax avoidance. By retained oil payment, the petitioner has received something definitely of value here. He's having this oil extracted and at no cost to him, and, therefore, his unrecovered basis represents additional cost of the retained payment.

The government will also argue that the petitioner retained an interest in this equipment to the extent that this equipment would be utilized to produce the retained oil payment.

We feel that the Chock case is distinguishable from the instant set of facts. We have a stipulation with three exhibits, 1-A through 3-C, which I offer at this time.

The Court: It will be received.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits Nos. 1-A, 2-B, 3-C.)

Mr. Bullion: Your Honor, we would like to call Mr. Mortimer Kline.

Whereupon,

MORTIMER KLINE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please.

The Witness: Mortimer Kline. My address is 440 Saint Cloud Road, Los Angeles. [5]

Direct Examination

By Mr. Boullion:

Q. Mr. Kline, what is your occupation?

A. I am by profession a lawyer, and I also devote a substantial amount of my time to the oil business as an independent oil operator.

Q. It's stipulated that you bought all the stock of Gordon Oil Company. Did you buy that stock for your own account? A. I did, sir.

Q. Were you acting as a principal?

A. I was.

Q. You were not acting as an agent for anyone?

A. I was not acting as an agent for anyone.

Q. Why did you buy the stock of Gordon?

A. Well, I had hoped to make a profit from the transaction, assuming that I could put all the pieces together in this transaction.

Q. What was the nature of your negotiations in connection with the purchase of that stock?

(Testimony of Mortimer Kline.)

A. The situation was this: There were 32 companies owning properties in the Placerita area of Los Angeles County.

There was a Nelson-Phillips Oil Company, and the Gordon Oil Company, who owned adjoining leases. I had devoted a great deal of time to other properties in the area and saw [6] the possibilities of doing something with these two companies.

Upon inquiry, it developed that I had known Gordon Phillips, and I knew some of the other stockholders in these two companies. It developed the stockholders were in a squabble amongst themselves, and they were planning to put up the necessary money to drill wells. I later found out that the stockholders, some of them, were not talking with one another, and so when it became apparent that it was impossible to buy the assets of these companies, the only way the deal could be made was by buying all the stock which I proceeded to do, and I negotiated over a long period of time, much too long with these various stockholders, and endeavored to make a deal, and found out the companies were very much involved in litigation, and there was a lot of recrimination amongst the stockholders, and one thing and another. I devoted a matter of months, I guess to closing this thing up.

Q. After you bought this stock of Gordon, did you take over control of the company?

A. I did.

Q. What office did you occupy?

A. I occupied the office of president.

(Testimony of Mortimer Kline.)

Q. Were you also a director?

A. I was also a director of the company besides the president.

Q. After you acquired control of Gordon, what did [7] Gordon do with its oil and gas properties and the physical equipment pertaining thereto?

A. Well, we negotiated an agreement with Messrs. Morrow and Meadows in combination of which the Gordon Oil Company sold to Messrs. Meadows and Morrow all of the tangible assets and working interest in its leasehold estate, and reserved——

Mr. Townsend: The respondent moves to strike these conclusions contained in that answer on the ground that it's a conclusion.

The Court: I will not strike the answer. However, I will take into account the fact that the witness is using terminology that might perhaps assume the conclusion that's to be drawn by the Court itself.

The Witness: Well, in any event, the documents were executed, and it is obvious they are the best evidence of what they contain. I agree with you to that extent. I was merely trying to outline in general terms what happened. Maybe I could be more accurate in view of your objection, to say that the Gordon Oil Company did execute documents which in my opinion vested in Messrs. Morrow and Meadows the working interest in the oil and gas leases, and the physicals, and all the other assets of Gordon Oil Company, except cash and accounts receivable and retained in the conveyance, the instru-

(Testimony of Mortimer Kline.)

ment being the best evidence, a production payment of \$3,600,000.00, payable out of 85 per cent of the production [8] from these leases and carrying the additional increments of five per cent in addition to the principal amount of the oil payment, and then almost concurrently with that transaction, the Gordon Oil Company went into dissolution, and conveyed to me the remaining assets of the Gordon Oil Company, including this production payment and simultaneously I sold, I would say Mrs. Kline and I sold—she joined in the conveyance—that production payment at par to a purchaser.

Q. (By Mr. Bullion): Mr. Kline, did Gordon Oil Company, acting through its stockholders and directors, intend by Exhibit 3-C, which is the assignment, you know, to Morrow and Meadows, intend to dispose of all of its interest in the physical equipment in and on the leases and other tangible assets pertaining thereto? A. Yes.

Q. Now, how did you arrive at a consideration of \$250,000.00?

A. That was a product of negotiations and discussions between, I think, principally Morrow and myself, and in my judgment that represented the fair market value of the equity, subject to the oil payment.

Q. Did Mr. Morrow or Mr. Meadows at any time ever have any connection with Gordon Oil Company as an officer, stockholder, director, or otherwise?

A. None whatever. [9]

Q. Did you have any connection whatsoever with

(Testimony of Mortimer Kline.)

the purchaser to whom you sold the production payment? A. None whatever.

Mr. Bullion. That's all.

Cross-Examination

By Mr. Townsend:

Q. Mr. Kline, what was the source of funds to purchase the stock of the Gordon Oil Conmany?

A. I borrowed the money from the First National Bank in Dallas, Texas.

Q. And did you pledge at any time your retained oil payment for that loan?

A. I pledged all of the stock of Gordon Oil Company. I purchased every share of stock of Gordon and signed a pledge agreement with the bank.

Q. Then, when you sold your retained oil interest, you took those funds and paid off the bank loans? A. That is correct.

Q. When was that equipment placed on those leases?

A. Well, the equipment was placed on the leases by Gordon Oil Company prior to the time that I acquired it.

I might say parenthetically, I don't know what effect it would have on this proceeding, but due to the fact that these men were squabbling amongst themselves, the stockholders of the company, they had not kept this equipment up, or their [10] physicals up, in the way that a prudent oil operator would have done at that time, and——

(Testimony of Mortimer Kline.)

The Court: I have not had an opportunity to read the stipulation or the accompanying exhibits. I therefore inquire of counsel whether the stipulation exhibits disclose—the exhibits disclose the age of the equipment, its initial cost, or any other detail with respect to the equipment that might throw some light upon its fair market value as of the time of this alleged sale.

Mr. Bullion: Your Honor, the stipulation shows the original cost, less the reserve for depreciation. It shows when Gordon Oil Company acquired these leases and during a relatively short period of two years drilled and equipped 29 wells on the leases.

The Court: The equipment was placed on the property after the acquisition of the leases?

Mr. Bullion: After the acquisition of the leases, they were undeveloped and it is so stipulated. They were undeveloped when Gordon Oil Company acquired the leases.

Mr. Townsend: I think that's covered in the stipulation.

I have no further questions.

Mr. Bullion: That's all. We rest, your Honor.

The Court: Do you have any further evidence to——

Mr. Townsend: Respondent's case is submitted. [11] Government counsel rests.

The Court: Ordinarily, I prefer consecutive briefs, particularly with the factor in dispute. However, the facts in this case appear to be largely stipulated, and if counsel care to consider conferring

with each other off the record and can agree upon whether they would prefer consecutive or simultaneous briefs, I will adopt whatever suggestion they care to make to me.

Mr. Bullion: I will let you name it, Mr. Townsend.

Mr. Townsend: I would prefer simultaneous briefs, your Honor, subject to Mr. Bullion.

Mr. Bullion: That's agreeable.

The Court: All right, the open brief in 45 days; the reply briefs in 30 days.

The Clerk: June 7th and July 8th, those dates are, gentlemen.

(Whereupon, at 10:30 o'clock, a.m., Monday, April 22, 1957, the hearing in the above-entitled matter was closed.)

Filed May 10, 1957, T.C.U.S. [12]

[Title of Tax Court and Cause.]

Docket Nos. 57291, 57292

FINDINGS OF FACT AND OPINION

Taxpayer, Gordon Oil Company, assigned two producing oil and gas leases and certain tangible property connected therewith. At the time of the assignment Gordon's leasehold costs had been fully depleted, and the tangible property had an adjusted basis of \$332,518.70. Gordon received \$250,000 from the assignors at the time of the assignment, and excepted from the assignment an oil payment in the face amount of \$3,600,000. It claimed a deduction

to the extent that the adjusted basis of the tangible property exceeded the cash payment of \$250,000. Held, in the absence of evidence that a portion of the remaining consideration was not properly allocable to the tangible property, the taxpayer failed to carry its burden of proving that the tangible property was sold for only \$250,000, and the deduction must therefore be disallowed.

SIDNEY R. REED, ESQ., and

J. W. BULLION, ESQ.,

For the Petitioners.

MARK TOWNSEND, ESQ.,

For the Respondent.

Respondent determined deficiencies in the income and excess profits taxes of Gordon Oil Company for the taxable period January 1 to August 31, 1951, in the total amount of \$46,256.88. He determined further that Mortimer A. Kline is the transferee of the assets of that company, and is liable for the deficiencies. At issue is whether Gordon incurred a deductible loss on the assignment of certain tangible property.

Findings of Fact

Some of the facts have been stipulated and are incorporated herein by this reference.

Mortimer A. Kline, hereinafter called "Kline," is an individual residing in Los Angeles, California. He filed his income tax return for the taxable year ended December 31, 1951, with the collector of internal revenue at Los Angeles, California.

Gordon Oil Company, hereinafter called "Gordon," was incorporated under the laws of the State of California on January 20, 1949. It was incorporated for the purpose of acquiring, exploring, developing and producing oil and gas properties, and throughout the period of its existence conducted that business. Gordon filed its income and excess profits tax returns for the taxable period January 1, 1951, to August 31, 1951, with the collector of internal revenue at Los Angeles, California.

Gordon, on March 22, 1949, acquired two undeveloped oil and gas leases in Placerita Field, Los Angeles County, California. Gordon drilled and equipped twenty-nine producing wells on the leaseholds.

During the period from March to May, 1951, Kline purchased all of Gordon's outstanding stock for a total consideration of \$3,962,432.54. Kline purchased the stock for his own account. The purchases were financed by a loan from a bank in Dallas, Texas. All of the stock in Gordon purchased by Kline was pledged as collateral for the loan.

Kline, after acquiring all of the outstanding stock of Gordon, became a director and the president of the company.

After Kline had acquired control of Gordon, Gordon, as a principal, by proper and appropriate corporate action, executed under date of May 7, 1951, an agreement with Tevis F. Morrow (herein-

after called Morrow) and A. H. Meadows (hereinafter called Meadows). Upon the execution of this agreement there was paid to Gordon \$250,000 in cash.

The agreement provided, in part, as follows:

For a valuable consideration, cash in hand paid unto Assignor [Gordon] by Assignee [Morrow and Meadows jointly], the receipt of which is hereby acknowledged, and in consideration of the strict and punctual performance by Assignee, its representatives and assigns, of the covenants herein provided to be kept and performed by Assignee, its representatives and assigns, and, subject to the exception and reservation hereinafter stated, Assignor does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver unto Assignee all interests in lands wherever situated and all easements, permits, licenses, servitudes and rights of every character which are useful or appropriate in exploring for, developing, operating, treating, storing, or transporting oil, gas or other minerals, on the date hereof owned or controlled by Assignor * * * together with all improvements and all the interests of Assignor in all personal property situated upon or used in connection with mining operations on said lands, and all other tangible personal property or interests therein now owned by Assignor, and all other properties and interests in properties of whatsoever kind or character, except accounts receivable and moneys on hand or on deposit; now owned by Assignor.

* * *

Assignor hereby excepts from this conveyance and does hereby reserve unto itself, its successors, representatives and assigns, as a limited overriding royalty interest or production payment free of all development, operation, production and other costs and expenses of any kind whatsoever, subject to the limitation hereinafter set forth, an undivided eighty-five per cent (85%) (hereinafter sometimes referred to as the "reserved share,") of "Assignor's interest," as hereinafter defined, in all of the oil, gas, casinghead gasoline and other hydrocarbons and other minerals in, under and upon, or that may be produced and saved from the lands described in Exhibit 1.¹

(1) As used in the foregoing exception and reservation, the expression "Assignor's interest" means the working interest share of all the oil, gas, casinghead gasoline and other hydrocarbons and other minerals of any kind whatsoever in, under or upon or that may be produced and saved from the lands * * * which, immediately prior to the execution and delivery of this conveyance, was vested in Assignor and which, from and after the effective date hereof, but for the foregoing exception and reservation, would accrue or belong to Assignee, its representatives and assigns, by virtue of this conveyance.

* * *

¹The properties described in Exhibit 1 were the leaseholds held by Gordon prior to this agreement.

(3) The foregoing exception and reservation shall be effective as of the effective date of this conveyance.

(4) The foregoing exception and reservation shall remain in full force and effect until such time as Assignor, its successors, representatives and assigns, shall have received out of the net proceeds of the sale of the "reserved share" of the oil, gas, casinghead gasoline and other hydrocarbons and other minerals of any kind whatsoever the full net sum of Three Million Six Hundred Thousand Dollars (\$3,600,000), in cash; plus

(a) an amount equal to the aggregate of all severance and gross production taxes and all other taxes and assessments of any kind whatsoever levied upon or assessed against or measured by the production accruing to the "reserved share" and all ad valorem taxes and all other taxes and assessments of any kind whatsoever levied upon or assessed against the property interests hereby excepted and reserved, to the extent, but only to the extent, that any of such taxes or assessments are paid by Assignor; plus

(b) an additional amount equal to interest from May 1, 1951, on the unliquidated balance of the aggregate of said sum and amount at the rate of five per cent (5%) per annum computed monthly on the basis of a 360-day year, 30-day month, on the first day of each month, beginning June 1, 1951.

The net proceeds of the sale of the "reserved share" of the oil, gas, casinghead gasoline and other hydrocarbons and other minerals of any kind whatsoever, shall be applied each month by Assignor, its successors, representatives and assigns, first, to the amount equal to interest as specified in subparagraph (4)(b) above; then to the amount equal to the aggregate of all taxes and assessments that are paid by Assignor as specified in subparagraph (4)(a) above; and then to the sum first specified in this paragraph (4).

(5) It is further understood that upon the aggregate sum and amounts above provided for being paid to and received by Assignor, its successors, representatives and assigns, all rights, titles, and interests hereby reserved unto Assignor shall terminate and thereupon the fractional interest hereby reserved shall be vested in Assignee, its representatives and assigns, free and clear of the exception and reservation herein made, and to evidence the fact, Assignor, its successors, representatives and assigns, will at any time and from time to time execute and deliver on request all necessary and appropriate acquittances.

(6) It is understood that Assignee shall never personally be liable for payment of the above described production payment and that Assignor and its successors, representatives and assigns, shall look exclusively to the oil, gas and other minerals reserved herein for the payment thereof, and that Assignor, its successors, representatives and assigns,

shall have no lien whatsoever for the payment of said production payment, provided that nothing in this paragraph contained shall impair the obligation of Assignee under subparagraphs (g), (h) and (i) of Paragraph 10 hereof to account to Assignor, its successors, representatives and assigns, for funds which come into the hands of Assignee and which are attributable to the "reserved share."

(7) The above reservation and exception shall in no sense extend to any lease equipment or other personal property which is included in this sale, all of which equipment and personal property is being sold to Assignee without reservation.

(8) As a further consideration for this assignment Assignee for itself, its representatives and assigns, covenants and agrees with Assignor, its successors, representatives and assigns, until such time as the aggregate sum and amounts above provided for have been fully paid to and received by Assignor, its successors, representatives and assigns, in a good and workmanlike manner, to develop and operate or cause to be so developed and operated, the oil and gas properties described in Exhibit 1, and to produce oil and gas from the respective wells located on the lands described in Exhibit 1, so long as oil, gas or other hydrocarbons can be produced therefrom in paying quantities, and to comply with all the terms and provisions, both express and implied, of the oil, gas and mineral lease described in Exhibit 1, subject to the proviso stated in the next succeeding sentence hereof. If Assignee elects

to abandon or release any specific portion or portions of the properties described in Exhibit 1 from the operation of such oil, gas and mineral lease, in accordance with the provisions contained in such lease, and thereby be relieved from further obligation as to the property which Assignee desires to abandon or release, Assignee prior to such abandonment or relinquishment shall give to Assignor, its successors, representatives and assigns, thirty (30) days' written notice of such intention, and upon written request of Assignor, its successors, representatives and assigns, or any of them, within said period of thirty (30) days, Assignee, its representatives and assigns, shall execute to Assignor, its successors, representatives and assigns, or such of them as may make said written request, or to the nominee of such of them as may make said written request, a reassignment of the interest in the portion of said lease which Assignee desires to abandon or release, by recordable instrument, in which event Assignee shall be relieved from further obligation with reference to the portion so reassigned, but thereby the amount of the aforesaid production payment and the fraction of the production from the remaining lands described in Exhibit 1 out of which it is dischargeable shall not be reduced, affected or impaired. In the event Assignor, its successors, representatives and assigns, do not desire a reassignment of said interest, then Assignor, its successors, representatives and assigns, shall join in the execution of a recordable release of said portion of said property in accordance with the provisions of said

lease, but thereby the amount of the aforesaid production payment and the fraction of the production from the remaining lands described in Exhibit 1 out of which it is dischargeable shall not be reduced, affected or impaired.

* * *

(10) As a further consideration for this assignment, Assignee for itself, its representatives and assigns, covenants and agrees with Assignor, its successors, representatives and assigns, until such time as the aggregate sum and amounts above provided for have been fully paid, to

(a) Deliver at its own expense in quadruplicate to Assignor, its successors, representatives and assigns, on or before November 15 in each year, beginning with the year 1951, a report prepared by a mutually acceptable geologist, setting forth as of the preceding October 1, an estimate of reserves of recoverable oil, gas and other minerals properly allocable to the interests described in Exhibit 1, the future income to be derived from the sale of such recoverable reserves at prices existing as of October 1 of each year (future income to be set forth by years for a six (6) year period and for future years thereafter as a single period); and such other geological and scientific data as Assignor, its successors, representatives and assigns, shall reasonably request;

(b) Obtain from time to time and at any time, on request of Assignor, its successors, representa-

tives and assigns, from persons approved in writing by them, any and all geological, engineering and other scientific data and reports regarding the properties described in Exhibit 1 deemed necessary or appropriate by Assignor, its successors, representatives and assigns, and to deliver the same unto Assignor, its successors, representatives and assigns;

(c) Deliver in quadruplicate to Assignor, its successors, representatives and assigns, on or before the last day of each month, beginning with the month of June, 1951, a production report in a form approved by Assignor, its successors, representatives and assigns, setting forth the results of operations of the properties described in Exhibit 1 during the preceding calendar month;

(d) Keep true and correct books and records showing the production of all oil, gas, casinghead gasoline and other hydrocarbons and other minerals of any kind whatsoever from the lands described in Exhibit 1 and all necessary information with respect to such production, to show and determine the "reserved share" of such production;

(e) Permit Assignor, its successors, representatives and assigns, and the accredited agents and nominees of any of them, at all times to go upon, examine, inspect and remain on all lands described in Exhibit 1, and to examine, audit and make excerpts from any and all books and records of Assignee, its representatives and assigns, regarding the lands and properties described in said exhibit and the production from said lands;

(f) Deliver to the credit of Assignor, its successors, representatives and assigns, into the pipe lines to which the wells may be connected, free of all charges, the "reserved share" of the oil produced and saved from the lands described in Exhibit 1;

(g) Account to Assignor, its successors, representatives and assigns, for the net proceeds of the sale of the "reserved share" of the gas, casinghead gasoline and other hydrocarbons other than oil produced from the lands described in Exhibit 1;

(h) Pay to Assignor, its successors, representatives and assigns, the proceeds of the sale of the "reserved share" of the oil produced and saved from any lands described in Exhibit 1, which on the date hereof is subject to a crude oil sales contract under the terms of which Assignor is not entitled to be paid direct by the purchaser of such production for the "reserved share";

(i) Account to Assignor, its successors, representatives and assigns, for the "reserved share" of all gas produced from any lands described in Exhibit 1, which on the date hereof is subject to a gasoline extraction contract under the terms of which Assignor is not entitled to be paid direct by the purchaser of such production for the "reserved share";

(j) Pay all taxes and assessments of any kind whatsoever levied upon or assessed against or measured by the production by Assignee of oil, gas,

casinghead gasoline and other hydrocarbons or other minerals of any kind whatsoever from the lands described in Exhibit 1, and all ad valorem taxes and all other taxes and assessments of any kind whatsoever levied upon or assessed against the lands and properties described in Exhibit 1, which are due and payable after the effective date hereof;

(k) Comply with all laws and regulations pertaining to the exploration and development of the lands described in Exhibit 1 and the conduct of all operations under the oil and gas mining lease described in said exhibit;

(l) Pay all costs and expenses incurred in developing and operating the lands described in Exhibit 1 and not permit any mechanic's, materialmen's, or laborer's liens to attach to said lands or any interest therein or any personal property thereon.

(11) An event of default will occur upon the happening of any one or more of the following events:

(a) Should Assignee, its representatives or assigns, in any respect fail strictly and promptly to keep and perform or to observe any one or more of the conditions, obligations, covenants, promises and undertakings herein provided to be observed, kept and performed by it, and such failure to observe, keep and perform any one or more of such conditions, obligations, covenants, promises and undertakings continues for thirty (30) days after demand for performance is made in writing on Assignee,

its representatives and assigns, or any one or more of them, by Assignor or those successors, representatives and assigns of Assignor at the time holding at least an undivided two-thirds ($\frac{2}{3}$) of the rights, titles and interests hereby reserved unto Assignor; or

(b) Should there be appointed a receiver of Assignee, its representatives or assigns, or of any of its properties; or

(c) Should Assignee, its representatives or assigns, be adjudicated an involuntary bankrupt, by a court of competent jurisdiction; or

(d) Should Assignee, its representatives or assigns, apply to be adjudicated a bankrupt; or

(e) Should an assignment be made by Assignee, its representatives or assigns, for the benefit of creditors; or

(f) Should Assignee, its representatives or assigns, fail for sixty (60) days after any money judgment against it shall have become final, to pay such judgment.

On the occurrence of any event of default, Assignor or those successors, representatives and assigns of Assignor at the time holding at least an undivided two-thirds ($\frac{2}{3}$) of the rights, titles and interests hereby reserved unto Assignor, shall thereupon or thereafter have the continuing and absolute right, privilege and option, until the limited overriding royalty interest or production payment

herein reserved has been fully paid, liquidated and discharged, to take over, hold, manage, operate and develop all or any part of the interest of Assignee, its representatives and assigns, in the oil, gas and mineral lease and oil and gas mining leasehold estate described in Exhibit 1 and the lands and properties covered thereby, together with the interest of Assignee in all machinery and equipment of every kind and character located on said lands or which may be used or useful in the operation of said oil, gas and mineral lease, and the further right to sell all of the oil, gas and other minerals of every kind whatsoever produced, saved, derived, obtained or accruing alike to the interest of Assignor and the interest of Assignee thereunder. If such right, privilege and option be exercised, Assignor, its successors, representatives and assigns, shall not be liable to Assignee, its representatives and assigns, or to anyone claiming or to claim under them, or any of them, for any action or failure to act except as to any such act or omission which is the result of actual bad faith.

If the aforesaid right, privilege and option is exercised, Assignor, its successors, representatives and assigns, shall be entitled to collect the proceeds of the oil, gas and other minerals accruing both to the interest hereby assigned and the interest hereby reserved unto Assignor. It is understood that no duty is hereby imposed on Assignor to exercise such right, privilege and option, but if it is exercised, then for all costs incurred in the preservation, pro-

tection, operation and development of said properties, and in the discharge of any obligations appertaining thereto, together with interest at the rate of six per cent (6%) per annum, computed monthly on the first day of each month from the respective dates of outlay on the unliquidated balance of such costs. Assignor, its successors, representatives and assigns, shall be entitled to reimbursement from the proceeds of production accruing to the interest that by this assignment is vested in Assignee, and for the balance, if any, Assignor shall account to Assignee.

If such right, privilege and option is exercised, it is understood that Assignor, its successors, representatives and assigns, shall have no title or interest of any character in the personal property and equipment on the lands described in Exhibit 1 and in the properties and interests in properties conveyed hereby, and shall have solely the entire use of such personal property and equipment, free of any rental costs or other charges whatsoever, for the purpose of operating said premises, and that all such properties shall at all times remain the property of Assignee. Said right, privilege and option may be exercised at any time and from time to time after occurrence of an event of default by Assignor or those successors, representatives and assigns of Assignor at the time holding at least an undivided two-thirds ($\frac{2}{3}$) of the rights, titles and interests hereby reserved, communicating a desire to take over possession of said properties to Assignee, its representatives or assigns, or any one or more of them, whereupon As-

signee, its representatives and assigns, shall immediately deliver possession of said premises and do all other acts and things necessary or appropriate to be done to make such right, privilege and option effective. It is further understood that said right, privilege and option is a continuing option and that no exercise of such right, privilege and option shall be held to exhaust said right, privilege and option, but the same may be exercised at any time and from time to time until the limited overriding royalty interest or production payment herein reserved shall have been fully liquidated and paid.

* * *

The excepted interest reserved by Gordon in the agreement with Morrow and Meadows would be liquidated in full substantially prior to the exhaustion of the economic life of the leases and was not tantamount to an overriding royalty.

At the time of the agreement with Morrow and Meadows, Gordon had fully depleted its leasehold cost in both of the leases, but had on hand tangible assets pertaining to the operation of the leases, with a then adjusted basis of \$332,518.70. These assets, their respective costs to Gordon, adjustments due to depreciation, and their adjusted basis were as follows, as of the date of the agreement:

Physical equipment in wells	\$159,748.52
Buildings	8,147.12
Machinery and equipment	5,414.27
Pipelines	18,909.76
Pumping equipment	94,745.87

Reservoirs and tanks	\$ 25,725.35
Autos and trucks	7,200.05

Total	\$319,890.94
Less reserve for depreciation	37,429.80

Adjusted basis of fixed assets	\$282,461.14
Crude oil inventories—at book amount	13,215.15
Materials and supplies—at book amount	34,204.04
Electrical service deposits	2,638.37

Total Adjusted Basis of Prop- erties Sold	\$332,518.70
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Kline, on behalf of Gordon, negotiated the sale of the working interest in the leasehold estates and the sale of all of its other properties except cash and accounts receivable with Morrow and Meadows. Morrow and Meadows never had any connection with Gordon as an officer, stockholder, director or otherwise.

Following the execution of the agreement with Morrow and Meadows, Gordon was dissolved and all of its assets and property then on hand, including the excepted interest, were distributed in complete liquidation of the company to Kline in cancellation and redemption of all of the outstanding stock of the company.

After Gordon was dissolved and liquidated, Kline, as a principal, sold the excepted interest which he

had received in liquidation of Gordon for \$3,600,000, to a purchaser with whom he never had any prior connection. Following the liquidation of Gordon and the sale of the excepted interest, Kline paid off the indebtedness he had incurred with the Dallas bank in connection with his purchase of all of the outstanding capital stock of Gordon.

Kline was the transferee of the assets of Gordon upon its complete liquidation in August, 1951.

Gordon as a result of the transaction with Morrow and Meadows claimed a loss deduction of \$82,518.70. Respondent disallowed the deduction.

Opinion

Raum, Judge:

If the transaction before us were simply the sale of tangible property for \$250,000, then certainly the seller would have sustained a deductible loss measured by the excess of its adjusted basis (\$332,518.70) over the sales price. But the difficulty with petitioners' position is that the record fails to support their assumption that the tangible property was sold for \$250,000, and there is no convincing evidence that the consideration passing to the seller in respect of the tangible property was less than its adjusted basis.

The cash payment of \$250,000 was part of an integrated transaction involving an assignment of the working interests in two producing oil and gas leases along with all related assets except cash and ac-

counts receivable. The assignment of the working interests, however, was made subject to a reserved production payment in the amount of \$3,600,000 out of eighty-five per cent of the oil, gas or other minerals produced. The reservation also included an amount equal to interest at the annual rate of five per cent upon the unliquidated balance and, in addition, all production and ad valorem taxes paid by the assignor. The assignees covenanted to develop and operate the oil and gas properties in a good and workmanlike manner and to produce oil and gas so long as they could be produced in paying quantities, except to the extent that the assignees should abandon or release any specific portions of the properties by reassignment to the assignor. The instrument of assignment contained comprehensive provisions, including certain visitorial privileges and rights of inspection, calculated to enable the assignor to assure itself of the assignees' compliance with their various covenants. These covenants were plainly of considerable value to the assignor.

Nowhere in the instrument of assignment is there any language indicating either explicitly or by implication that the \$250,000 cash payment was the sole consideration for the tangible property. A reading of the instrument as a whole persuasively suggests that it represented a "package deal", and we have no way of knowing on the record before us whether a proper allocation of the total consideration running to the assignor in respect of the tangible property includes something more than the \$250,000 cash payment.

Obviously, the parties could easily have varied the amount of the immediate cash payment with appropriate accompanying changes in the consideration relating to the so-called reserved payment. Or, they might even have eliminated the immediate cash payment entirely while at the same time providing for increased consideration in respect of the other covenants. Could it fairly be said in such circumstances that the tangible property was being sold for nothing? The answer is plainly no. The transaction was a matter of negotiation between the parties, and it was entirely up to them as to whether there would be any immediate cash payment or the amount thereof. And if there was a cash payment, as in the present case, there must be some satisfying proof that it represented the sole consideration for the tangible assets before the assignor can succeed in its claim that it suffered a deductible loss, measured by the excess of the adjusted basis over the cash payment. Otherwise, merely by juggling the cash payment and the so-called retained interest, it would be able to obtain a deduction on account of a loss that it in fact did not sustain. We do not believe that such result was ever intended by the Congress.

Our problem is to determine whether the consideration properly allocable to the tangible property was less than its adjusted basis. Petitioners merely assert, without proof, that the consideration consisted solely of the \$250,000 cash payment. The burden of proof, however, was upon them, and they have completely failed to carry it. There is no convincing evi-

dence that the tangible assets were worth less than their adjusted basis at the time of sale, or that the seller negotiated a deal whereby the total consideration receivable in respect of such assets was less than their adjusted basis. One who claims a deduction on account of loss must establish his right to it.

The Government's position is supported by administrative practice of at least some fifteen years' standing. G.C.M. 23623, 1943 Cum. Bull. 313. See also Rev. Rul. 55-35, 1955-1 Cum. Bull. 286. Petitioners' reliance upon *Choate vs. Commissioner*, 324 U.S. 1, is misplaced. No issue was raised in that case as to whether a loss was actually sustained; that fact was assumed, and the Supreme Court explicitly noted that no question was "presented concerning the allocation of a portion of the purchase price to the equipment," 324 U.S. at p. 4. Cf. *Theoretical "Loss" On Equipment Arising From Producing Leasehold Assignment*, 4 *Oil and Gas Tax Quarterly* 1, 9-10. The very heart of the present case is whether a loss was in fact sustained, and on that question petitioners have failed to carry the burden of proof.

In Docket 57291 petitioner Kline does not contest his liability as transferee.

Decisions will be entered for the respondent.

Filed: March 13, 1958.

The Tax Court of the United States
Washington

Docket No. 57291

MORTIMER A. KLINE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed March 13, 1958, it is

Ordered and Decided: That there is an unpaid liability in the amount of \$46,256.88, together with interest thereon as provided by law, on the part of this petitioner as transferee of the assets of Gordon Oil Company for deficiencies in income and excess profits taxes for the taxable period January 1, 1951, to August 31, 1951.

[Seal] /s/ ARNOLD RAUM,
Judge.

Entered: March 19, 1958.

Served: March 20, 1958.

The Tax Court of the United States
Washington

Docket No. 57292

GORDON OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed March 13, 1958, it is

Ordered and Decided: That there is an unpaid liability in the amount of \$46,256.88, together with interest thereon as provided by law, on the part of Mortimer A. Kline as transferee of the assets of Gordon Oil Company for deficiencies in income and excess profits taxes for the taxable period January 1, 1951, to August 31, 1951.

[Seal] /s/ ARNOLD RAUM,
Judge.

Entered: March 19, 1958.

Served: March 20, 1958.

[Title of Tax Court and Cause.]

Docket No. 57292

ORDER VACATING DECISION
AND DECISION

For cause, it is

Ordered: That the decision entered in this proceeding on March 19, 1958, be and the same is hereby vacated; and it is further

Ordered and Decided: That there are deficiencies in income and excess profits tax for the taxable period January 1, 1951, to August 31, 1951, in the total amount of \$46,256.88.

[Seal] /s/ ARNOLD RAUM,
Judge.

Entered: March 26, 1958.

Served: March 26, 1958.

In the United States Court of Appeals for the
Ninth Circuit

Tax Court Docket No. 57291

[Title of Cause]

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED
STATES

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Mortimer A. Kline, the Petitioner in this cause,
by the undersigned attorney, hereby files its Peti-

tion for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States entered on March 19, 1958, Tax Court Docket No. 57291, determining that Petitioner is liable as transferee of the assets of Gordon Oil Company for deficiencies in income and excess profits taxes for the taxable period January 1, 1951, to August 31, 1951, in the amount of \$46,256.88, and respectfully shows:

I.

Jurisdiction and Venue

The Petitioner on Review, Mortimer A. Kline, was the Petitioner in the Tax Court Proceeding. The Petitioner was and is a resident of, and was and is domiciled in Los Angeles, California. His office in Los Angeles is 812 General Petroleum Building, 612 South Flower Street, Los Angeles, 17, California. His return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California, such District being located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

The Petitioner files this Petition pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Nature of the Controversy

The controversy involved the proper determination of Petitioner's liability as transferee of all the

assets of Gordon Oil Company for federal income and excess profit taxes of Gordon Oil Company.

During the taxable period from January 1, 1951, to August 31, 1951, Gordon Oil Company, a California corporation with principal office at 812 General Petroleum Building, 612 South Flower Street, Los Angeles 17, California, sold all of its working interest in two oil and gas leases, and all of its other properties and interests in properties, except cash and accounts receivable, for a cash consideration of \$250,000.00. The "other properties" referred to above were tangible assets which were either in, on, or pertaining to the operation of the oil and gas leases. In the assignment of its working interest in the leases, Gordon reserved unto itself, its successors and assigns, a production payment in the sum of \$3,600,000.00, plus certain additional amounts, all of which was payable out of the proceeds of 85% of the runs accruing to the interest in the leases sold by Gordon. Gordon had no depletable basis at the time of the sale in the leasehold assets, but had an adjusted basis in the tangible assets which it sold of \$332,518.70. It claimed a loss on its return for the period here involved on the sale of such tangible assets of \$82,518.70, such loss being determined by deducting the consideration of \$250,000.00 from the aforesaid basis. Respondent disallowed the loss and determined a deficiency in income and excess profits taxes against Gordon of \$46,256.88 for the taxable period from January 1, 1951, to August 31, 1951.

After the sale of the working interest in the leases, and all of the tangible assets, Gordon was dissolved and all of its assets and property then on hand, including the reserved production payment, were distributed to Mortimer A. Kline, its sole stockholder, in complete cancellation and redemption of all of its outstanding stock. Kline is the Petitioner in this case. The Tax Court case involving the basic deficiency against Gordon Oil Company is a companion case to the instant case and is styled *Gordon Oil Company v. Commissioner of Internal Revenue*, Docket No. 57292. The Gordon case and the instant case were consolidated for hearing in the Tax Court and the decision in both cases was adverse to both Petitioners. The Gordon case decision is also being appealed. A Motion for consolidation of the two cases on appeal is being filed with the Court of Appeals for the Ninth Circuit.

The Petitioner's position is that Gordon sustained a recognizable loss of \$82,518.70 on its sale of the properties above referred to, and that accordingly it is liable for no deficiency in income and excess profits taxes. The Respondent's position was that Gordon had not sustained a recognizable loss on such sale, and that accordingly it was liable for a deficiency in the amount of \$46,256.88.

The Tax Court upheld the Commissioner and held that Gordon had not sustained its burden of proof to establish the claimed loss. Since Petitioner does not contest the fact that he is the transferee of

Gordon's assets, the Tax Court found against Petitioner and found that he was liable as transferee.

III.

Assignments of Error

The Petitioner assigns as error the following acts and omissions of the Tax Court of the United States:

1. The Tax Court erred in holding and deciding that there was a deficiency in income and excess profits taxes due from Gordon Oil Company in the amount of \$46,256.88.

2. The Tax Court erred in failing to find that Gordon Oil Company sustained a recognizable loss in the amount of \$82,518.70.

3. The Tax Court's finding that Gordon Oil Company failed to sustain its burden of proof to establish the loss of \$82,518.70 is clearly erroneous and not supported by the evidence.

4. Since the Tax Court erred as above in the Gordon case, it erred in holding Petitioner liable on the basis of transferee liability.

5. The Tax Court's decision is contrary to law.

Wherefore, the Petitioner prays that:

1. The United States Court of Appeals for the Ninth Circuit review, in this proceeding, the decision of the Tax Court entered March 19, 1958.

2. The decision of the Tax Court be reversed.

3. That Petitioner be granted such other and further relief as the Court may determine just and proper.

Respectfully submitted,

/s/ J. W. BULLION,

Attorney for Petitioner.

Duly verified.

Received and filed June 9, 1958, T.C.U.S.

[Title of Court of Appeals and Cause.]

Tax Court Docket No. 57291

NOTICE BY PETITIONER OF FILING
OF PETITION FOR REVIEW

To: Chief Counsel, Internal Revenue Service,
Washington, D. C.

You are hereby notified that the Petitioner in the above-captioned case did on the 6th day of June, 1958, mail to the Clerk of the Tax Court of the United States at Washington, D. C., for filing in said court, a Petition for Review by the United States Court of Appeals for the Ninth Circuit, of the decision of said Tax Court heretofore rendered in the above-entitled case. Copy of the Petition for Review as filed is hereto attached and served upon you.

Dated the 6th day of June, 1958.

/s/ J. W. BULLION;

Attorney for Petitioner.

Receipt of copy acknowledged.

Received and filed June 9, 1958, T.C.U.S.

In the United States Court of Appeals
for the Ninth Circuit
Tax Court Docket No. 57292

[Title of Cause.]

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED STATES

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Gordon Oil Company, the Petitioner in this cause, by the undersigned attorney, hereby files its Petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States entered on March 26, 1958, Tax Court Docket No. 57292, determining a deficiency in the Petitioner's federal income taxes and excess profits taxes for the period January 1, 1951, to August 31, 1951, in the amount of \$46,256.88, and respectfully shows:

I.

Jurisdiction and Venue

The Petitioner on review, Gordon Oil Company, was the Petitioner in the Tax Court proceeding.

Petitioner was a corporation organized under and by virtue of the laws of the State of California, with principal office at 812 General Petroleum Building, 612 South Flower Street, Los Angeles 17, California. Return for the period here involved was filed with the Collector of Internal Revenue for the Sixth District of California, such District being located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. This proceeding was brought on behalf of Petitioner by its Directors, pursuant to authority conferred upon them by law as Directors of a dissolved corporation.

The Petitioner files this Petition pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Nature of the Controversy

The controversy involves the proper determination of the Petitioner's liability for federal income and excess profits taxes.

During the taxable period from January 1, 1951, to August 31, 1951, Petitioner, Gordon Oil Company, sold all of its working interest in two oil and gas leases, and all of its other properties and interests in properties, except cash and accounts receivable, for a cash consideration of \$250,000.00. The "other properties" referred to above were tangible assets which were either in, on, or pertaining to the operation of the oil and gas leases. In the assignment of its working interest in the leases, Gordon

reserved unto itself, its successors and assigns, a production payment in the sum of \$3,600,000.00, plus certain additional amounts, all of which was payable out of the proceeds of 85% of the runs accruing to the interest in the leases sold by Gordon. Gordon had no depletable basis at the time of the sale in the leasehold assets, but had an adjusted basis in the tangible assets which it sold of \$332,518.70. It claimed a loss on its return for the period here involved on the sale of such tangible assets of \$82,518.70, such loss being determined by deducting the consideration of \$250,000.00 from the aforesaid basis. Respondent disallowed the loss and determined a deficiency in income and excess profits taxes against Gordon of \$46,256.88 for the taxable period from January 1, 1951, to August 31, 1951.

After the sale of the working interest in the leases, and all of the tangible assets, Gordon was dissolved and all of its assets and property then on hand, including the reserved production payment, were distributed to Mortimer A. Kline, its sole stockholder, in complete cancellation and redemption of all its outstanding stock. The Respondent determined a deficiency against Kline as transferee of Gordon's assets in the aforesaid amount of \$46,256.88; and the Tax Court case involving that deficiency is a companion case to the instant case, and is styled *Mortimer A. Kline v. Commissioner of Internal Revenue*, Docket No. 57291. The Kline case and the instant case were consolidated for hearing in the Tax Court, and the decision in both

cases was adverse to Petitioners. The Kline case decision is also being appealed. A Motion for consolidation of the two cases on appeal is being filed with the Court of Appeals for the Ninth Circuit.

The Petitioner's position is that Gordon sustained a recognizable loss of \$82,518.70 on its sale of the properties above referred to, and that accordingly it is liable for no deficiency in income and excess profits taxes. The Respondent's position was that Gordon had not sustained a recognizable loss on such sale, and that accordingly it was liable for a deficiency in the amount of \$46,256.88.

The Tax Court upheld the Respondent and held that the Petitioner had not sustained its burden of proof to establish the claimed loss.

III.

Assignments of Error

The Petitioner assigns as error the following acts and omissions of the Tax Court of the United States:

1. The Tax Court erred in holding and deciding that there was a deficiency in income and excess profits taxes due from the Petitioner in the amount of \$46,256.88.

2. The Tax Court erred in failing to find that Petitioner sustained a recognizable loss in the amount of \$82,518.70.

3. The Tax Court's finding that the Petitioner failed to sustain its burden of proof to establish

the loss of \$82,518.70 is clearly erroneous and not supported by the evidence.

4. The Tax Court's decision is contrary to law.

Wherefore, the Petitioner prays that:

1. The United States Court of Appeals for the Ninth Circuit review, in this proceeding, the decision of the Tax Court of the United States entered March 26, 1958.

2. The decision of the Tax Court be reversed.

3. That Petitioner be granted such other and further relief as the Court may determine just and proper.

Respectfully submitted,

/s/ J. W. BULLION,

Attorney for Petitioner.

Duly verified.

Received and filed June 9, 1958, T.C.U.S.

[Title of Court of Appeals and Cause.]

Tax Court Docket No. 57292

NOTICE BY PETITIONER OF FILING
OF PETITION FOR REVIEW

To: Chief Counsel, Internal Revenue Service,
Washington, D. C.

You are hereby notified that the Petitioner in the above-captioned case did on the 6th day of June,

1958, mail to the Clerk of the Tax Court of the United States at Washington, D. C., for filing in said court, a Petition for Review by the United States Court of Appeals for the Ninth Circuit, of the decision of said Tax Court heretofore rendered in the above-entitled case. Copy of the Petition for Review as filed is hereto attached and served upon you.

Dated the 6th day of June, 1958.

/s/ J. W. BULLION,
Attorney for Petitioner.

Service of copy acknowledged.

Received and filed June 9, 1958, T.C.U.S.

Tax Court of the United States

Docket Nos. 57291 and 57292

MORTIMER A. KLINE,
GORDON OIL COMPANY,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

ORDER ENLARGING TIME

For cause, it is

Ordered: That the time for filing the record on review and docketing the petitions for review in the

United States Court of Appeals for the Ninth Circuit is extended to September 7, 1958.

[Seal] /s/ J. E. MURDOCK,
Judge.

Dated: Washington, D. C., July 7, 1958.

Served July 9, 1958.

[Title of Tax Court and Cause.]

Docket Nos. 57291 and 57292

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 20, inclusive, constitute and are all of the original papers as called for by the "Designation of Contents of Record on Review", including Joint exhibits 1-A thru 3-C, attached to the Stipulation of Facts, in the cases before the Tax Court of the United States docketed at the above numbers and in which the petitioners in the Tax Court have filed petitions for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case as the same appear in the official docket in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States,

at Washington, in the District of Columbia, this
23rd of July, 1958.

[Seal] /s/ HOWARD B. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 16150. United States Court of
Appeals for the Ninth Circuit. Mortimer A. Kline,
Petitioner, vs. Commissioner of Internal Revenue,
Respondent, and Gordon Oil Company, Petitioner,
vs. Commissioner of Internal Revenue, Respondent.
Transcript of Record. Petition to Review Decisions
of Tax Court of the United States.

Filed: August 8, 1958.

Docketed: August 21, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 16150

MORTIMER A. KLINE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

GORDON OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JOINT MOTION FOR CONSOLIDATION
OF CASES ON APPEAL

The two above captioned cases were consolidated for hearing in the Tax Court. Gordon Oil Company vs. Commissioner of Internal Revenue, Docket No. 57292, is the basic case, and Mortimer A. Kline vs. Commissioner of Internal Revenue is ancillary to the basic case in that it involves the transferee liability of the sole stockholder of Gordon Oil Company with respect to the deficiency assessed against Gordon Oil Company which is under review in the Gordon Oil Company case. It has been stipulated by the parties that Kline was the transferee of the assets of Gordon upon its complete liquidation, and

Kline does not contest his liability as transferee if Gordon Oil Company is liable for the deficiency.

In view of the foregoing, it is respectfully moved and requested that this Court order the consolidation of the two captioned cases for purposes of this appeal and that it order the Clerk of the Tax Court of the United States to certify and transmit to this Court a single, consolidated transcript of Record on Review in the above captioned proceedings; and that it further order that these proceedings be consolidated for briefing, hearing, argument and decision.

/s/ J. W. BULLION,

Attorney for Petitioner.

No Objection,

/s/ ARCH M. CANTRALL, C.R.M.

Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

[Endorsed]: Filed June 19, 1958.

[Title of Court of Appeals and Cause.]

Docket No. 57292

ORDER RE CONSOLIDATION OF CASES FOR
PURPOSES OF APPEAL

Now, on consideration of the Joint Motion filed herein by counsel for the respective parties to the above-entitled proceedings, it is Ordered:

1. That the Clerk of the Tax Court of the United States shall certify and transmit to this Court a single, consolidated transcript of Record on Review in the above-entitled proceedings; and that these proceedings be and they are hereby consolidated for briefing, hearing, argument, and decision.

2. That the Clerk of this Court transmit a certified copy of this Order to the Clerk of the Tax Court of the United States to be by him incorporated in the transcript of Record on Review herein.

Dated this 19th day of June, 1958.

/s/ ALBERT LEE STEPHENS,
Chief Circuit Judge.

[Endorsed]: Filed June 19, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH PETITIONERS RELY AND DESIGNATION OF RECORD MATERIAL THERETO

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

1. The Petitioners in the above-entitled cases, which have been consolidated for briefing, hearing, argument and decision, rely upon the following points:

(a). Petitioner Gordon Oil Company, on the sale of its working interest in two oil and gas leases, sub-

ject to a reserved production payment, and all of its other properties except cash and accounts receivable which other properties had an adjusted basis of \$332,518.70 for a consideration of \$250,000.00, sustained a deductible ordinary loss of \$82,518.70.

(b). The finding of the Tax Court of the United States that Petitioners had failed to sustain the burden of proof imposed upon them in showing that Petitioner Gordon Oil Company sustained an ordinary loss of \$82,518.70 on the aforesaid sale is clearly erroneous and not supported by the evidence.

(c). The Tax Court of the United States erred in deciding a deficiency in income and excess profits tax due from Petitioner Gordon Oil Company in the amount of \$46,256.88, and, by reason of such decision, in deciding a deficiency in income and excess profits tax in the same amount against Petitioner Mortimer A. Kline as transferee of Petitioner Gordon Oil Company.

2. The agreed designation of record as filed in the above-entitled cases with the Tax Court of the United States and as ordered by this Court to be a single consolidated transcript of record on review is the record material to the points upon which Petitioners rely.

/s/ J. W. BULLION,

Attorney for Petitioners.

Affidavit of mail attached.

[Endorsed]: Filed August 20, 1958.

